

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA                    ) CAUSE NO. 3:04-CR-240-P  
  (  
vs.    )  
  ( MAY 27, 2009  
  ) DALLAS, TEXAS  
SHUKRI ABU BAKER                            ( 9:00 A.M.

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SENTENCING

BEFORE THE HONORABLE JORGE A. SOLIS  
UNITED STATES DISTRICT JUDGE

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A P P E A R A N C E S

FOR THE GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE  
1100 COMMERCE, 3RD FLOOR  
DALLAS, TEXAS 75242  
BY: MR. JIM JACKS  
MR. BARRY JONAS  
MS. ELIZABETH SHAPIRO  
MR. WALT JUNKER

FOR THE DEFENDANT: FREEDMAN, BOYD, HOLLANDER,  
(SHUKRI ABU BAKER) GOLDBERG & IVES, P.A.  
20 FIRST PLAZA, SUITE 700  
ALBUQUERQUE, NEW MEXICO 87102  
BY: MS. NANCY HOLLANDER  
MS. TERESA DUNCAN

1           THE COURT: Good morning, counsel. We are ready to  
2 proceed.

3           I am going to call these cases, and we will start with  
4 the individual defendants first, so we will start with Mr.  
5 Baker.

6           So Mr. Jacks, is the Government ready to proceed on this  
7 case?

8           MR. JACKS: Yes, Your Honor.

9           THE COURT: And Ms. Hollander, are you ready to  
10 proceed?

11          MS. HOLLANDER: Yes, Your Honor.

12          THE COURT: Ms. Hollander, if you and Ms. Duncan and  
13 Mr. Baker would come on up to the podium, I will address him  
14 from there.

15          MS. HOLLANDER: Yes, sir.

16          THE COURT: Any matters that we need to address,  
17 Ms. Hollander, before we proceed with the sentencing hearing?

18          MS. HOLLANDER: We just need to get our paper up  
19 here.

20          THE COURT: Sure. Take your time.

21          MS. HOLLANDER: I don't think that there are any  
22 matters, Your Honor. Ms. Duncan is going to address the  
23 Guidelines and the objections. I am going to address the  
24 sentencing issues.

25          THE COURT: Ms. Hollander, Ms. Duncan, have you

1 heard from the Probation Office this morning? They were  
2 preparing a new Guideline calculation. Has anybody heard from  
3 them this morning?

4 MS. DUNCAN: We haven't, Your Honor.

5 THE COURT: All right. I think they are supposed to  
6 be on the way up here.

7 Let's go ahead and proceed with the hearing.

8 You are Shukri Abu Baker?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Baker, you were here in Court last  
11 fall, we had a trial by a jury and you were convicted by a  
12 jury on November the 24th, 2008 on multiple counts--Count 1,  
13 conspiring to provide material support to a foreign terrorist  
14 organization; and then Counts 9 through 10, providing material  
15 support to a foreign terrorist organization; Count 11,  
16 conspiring to provide funds, goods, and services to a  
17 specially designated terrorist; Counts 12 through 21,  
18 providing funds, goods, and services to a specially designated  
19 terrorist; Count 22, conspiracy to commit money laundering;  
20 Counts 23 through 32, money laundering counts; Count 34, the  
21 filing false returns of an exempt organization.

22 We are now here on a sentencing hearing based on the  
23 jury's conviction on those counts. And the Probation Office  
24 has prepared a presentence report and then an addendum to the  
25 presentence report, and they have now prepared second addendum

1 to the presentence report. If you will hand those out.

2 Counsel, I will give you a chance to look at those. I  
3 have not had a chance to look at them either.

4 MS. DUNCAN: Your Honor, may I take a minute?

5 THE COURT: Sure. Take your time.

6 (Pause in proceedings.)

7 THE COURT: Mr. Baker, if you would come back up to  
8 the podium. I think we left off -- The Probation Office has  
9 prepared a presentence report and then an addendum to that  
10 presentence report based on some objections that were filed by  
11 your attorneys, and they have now prepared a second addendum  
12 that was just given to counsel this morning in response to  
13 some of the objections filed by your attorneys.

14 Have you had the opportunity to review these presentence  
15 reports with your attorneys?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And do you understand the information  
18 that is contained in these presentence reports?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Ms. Duncan, you and Ms. Hollander have  
21 had the opportunity to review these presentence reports with  
22 Mr. Baker, go over them with him and explain them to him?

23 MS. DUNCAN: We have, Your Honor.

24 THE COURT: And you are satisfied that he  
25 understands the information in the presentence reports.

1 MS. DUNCAN: Yes, Your Honor.

2 THE COURT: And you filed a number of objections.  
3 We will get to those momentarily.

4 And Mr. Jacks or Mr. Jonas, who is speaking on behalf of  
5 the Government?

6 MR. JONAS: Your Honor, depending upon the issue, we  
7 divided them up.

8 THE COURT: And the Government filed no objections.  
9 I have received your sentencing memorandum, but you have no  
10 objections to that report. Is that correct?

11 MR. JONAS: Yes, sir.

12 THE COURT: Then why don't we start with your  
13 objections, Ms. Duncan.

14 MS. DUNCAN: Your Honor, we trust that you have read  
15 our objections to the presentence report and the amended  
16 presentence report, and we are not going to repeat what we  
17 have written.

18 I did want to address the question of whether the 2001 or  
19 2002 Guidelines apply.

20 THE COURT: We can start off with that one, and then  
21 address first those that impact the Guidelines, and then if  
22 you want to address any of the others. You had a number of  
23 challenges and objections to factual statements in the PSR  
24 that don't affect the Guidelines one way or the other. But  
25 let's start off with that issue first, and then all the

1 objections that impact the calculation of the Guidelines.

2 MS. DUNCAN: Sure, Your Honor.

3 Obviously since we were just handed this supplement to  
4 the presentence report, I am not prepared to fully respond to  
5 the allegations here by the Probation Office. We maintain our  
6 objections, though, Your Honor, that the 2001 Guidelines  
7 apply, and under those 2001 Guidelines the terrorism  
8 enhancement does not apply to the offense --

9 THE COURT: What is your basis for that argument?

10 MS. DUNCAN: It being the 2001, your Honor?

11 THE COURT: I understand your argument why it should  
12 be the 2001. That has to do with when the offense was  
13 concluded. But why the terrorism enhancement doesn't apply,  
14 the 3A1.4 enhancement.

15 MS. DUNCAN: Your Honor, as we said in our  
16 objections to the presentence report, in 2001 there were no  
17 Guidelines for the material support offense and so the  
18 Guidelines would be calculated under the money laundering,  
19 1956. 1956 is not a federal crime of terrorism under 18  
20 U.S.C. 2332, and, therefore, the enhancement wouldn't apply.

21 THE COURT: But 3A1.4 was a part of the 2001 manual,  
22 so why wouldn't it apply?

23 MS. DUNCAN: Because it wouldn't apply to the  
24 offense of conviction for which the Guidelines were being  
25 calculated, Your Honor. There was no --

1           THE COURT:   What offense of conviction does 3A1.4  
2   apply to on its face?

3           MS. DUNCAN:   It applies to the material support,  
4   Your Honor, but there were no Guidelines under -- the  
5   Guideline that applied to material support was not in the  
6   2001, so --

7           THE COURT:   But what about 3A1.4 states that you  
8   have to have a conviction, that you have to have a Guideline,  
9   that 2M5.3?   What about that states that you had to have that  
10   Guideline in place?

11          MS. DUNCAN:   Well, the 2332 says that it has to be a  
12   federal crime of terrorism, and the money laundering is not a  
13   federal crime of terrorism.   Material support is, Your Honor.  
14   But what you look at is because there was no -- And I am  
15   trying to get to my notes here, Your Honor.   Just a moment,  
16   Your Honor.   Let me find that portion in my notes.

17          THE COURT:   Do you happen to have that Guideline  
18   manual with you?

19          MS. DUNCAN:   I do.

20          THE COURT:   I am just wondering what about that  
21   Guideline, 3A1.4 Guideline language leads you to believe that  
22   it doesn't apply to a money laundering conviction.   Because it  
23   says, "If the offense is a felony that involved intending to  
24   promote."   So it doesn't refer to any particular conviction.  
25   It is just the offense of conviction was intended to promote a

1 federal crime of terrorism. That is what it applies to.

2 MS. DUNCAN: And our position would be, Your Honor,  
3 that it would only apply to an offense that is listed in 18  
4 U.S.C. 2332.

5 THE COURT: But do you have to have a conviction for  
6 that?

7 MS. DUNCAN: Yes.

8 THE COURT: And we there was a conviction for under  
9 2339B.

10 MS. DUNCAN: Correct, Your Honor. Our position  
11 I -- I am sorry, Your Honor. I just found it. Thank you,  
12 Your Honor. As we pointed out, and it is in pages 7 through 8  
13 of our objections to the first presentence report, Your Honor,  
14 the Guidelines manual does not provide a Chapter 2 Guideline  
15 for 2339B. Therefore you would look to 2X for an analogous  
16 Guideline, and there is no analogous Guideline under the  
17 rules.

18 So then we look to 18 U.S.C., 3553(b), which controls,  
19 which says that you can look to the Guidelines and policy  
20 statements that can be applied meaningfully in the absence of  
21 a Chapter 2 offense Guideline. Application note to that, to  
22 2X5.1 lists the Guidelines and policy statements that can be  
23 applied meaningfully in the absence of a Chapter 2 offense  
24 Guideline. And in 2001 there is no Chapter 2 offense  
25 Guideline.



1           THE COURT: But doesn't that go to the calculation  
2 of the base offense level? I am just speaking here about  
3 application of the terrorism Guideline 3A1.4, base offense  
4 level.

5           MS. DUNCAN: Sure. I understand. Our position  
6 would be that that enhancement would apply to the offense for  
7 which Mr. Abu Baker was being sentenced, and under the 2001  
8 Guidelines that would be the money laundering which is not an  
9 offense under --

10          THE COURT: Okay. That is the basis for your  
11 argument.

12          Mr. Jonas, or Mr. Jacks, any response to that?

13          MR. JONAS: Your Honor, I am hoping that this issue  
14 is moot and the Court agrees with the Government and uses the  
15 later Guideline book with there is a section for material  
16 support.

17          Putting that aside, I don't think that you have to  
18 sentence someone under the material support base offense level  
19 to apply 3A1.4. He was convicted of providing material  
20 support. If the Court uses the 2001 book and uses the money  
21 laundering section as the base offense level, there is  
22 absolutely no reason why 3A1.4 can't apply to that, because  
23 especially in this case the money laundering offense level  
24 directly relates to the underlying conduct, providing material  
25 support.

1           Understanding that the IEEPA violation was the SUA --

2           THE COURT:   The specific crime?

3           MR. JONAS:   But the actual acts were very similar to  
4           the material support section.   So I think the conviction of  
5           material support gives us a 3A1.4, and Your Honor can apply it  
6           to whatever base offense level Your Honor finds, whether it is  
7           money laundering or material support under 2M5.3.

8           THE COURT:   Thank you.

9           Any response to that?

10          MS. DUNCAN:   Nothing further, Your Honor.   We stand  
11          on our objections.

12          THE COURT:   And I agree with Probation in the second  
13          addendum.   In looking at the Guideline, there is nothing on  
14          the face of 3A1.4 that states -- it was in place in the 2001  
15          manual, and there is nothing on the face of that Guideline  
16          that indicates it couldn't be applied in a money laundering  
17          conviction, just on its face.

18          It states that if the offense is a felony that involved  
19          or was intended to promote a federal crime of terrorism, then  
20          the Guideline applies, and I think that applies here in this  
21          case, so I think Probation is correct in the way that they  
22          have calculated their Guidelines.

23          And that section applies under either the 2001 or the  
24          2002 manual, and so either way that application is going to be  
25          there.

1           And it ends up, then, not making a difference in terms of  
2 application of the Guidelines which manual you end up  
3 applying, because that was the primary difference in the  
4 arguments that counsel was making that the 3A1.4 didn't apply.  
5 I think it does apply. And so it ends up not making a  
6 difference in terms of the application of the Guidelines.

7           Okay. I will hear your next argument.

8           MS. DUNCAN: Your Honor, before we go any further,  
9 we wanted to incorporate the other Defendants' objections and  
10 their sentencing memorandum to the extent that they benefit  
11 Mr. Abu Baker, and that would include the arguments that Your  
12 Honor hears today on those objections.

13           THE COURT: And you may have that.

14           MS. DUNCAN: Your Honor, I would like to focus on  
15 the level -- the enhancements that the PSR recommends be  
16 applied in this case.

17           The first is the two-level enhancement under 2M5.3(b).  
18 The Government and the Probation officer are arguing that the  
19 base level should be increased by two points because of the  
20 Government's allegation that in 1992 money from the Holy Land  
21 Foundation was sent to be used to buy pieces of steel. And I  
22 trust that Your Honor remembers the evidence that the  
23 Government proffered in support of that allegation at trial.

24           THE COURT: And I am not going to use that evidence  
25 in applying that enhancement. I think you are correct on

1     that. That was a pre-designation act, so I don't think you  
2     would use that to apply an enhancement.

3             MS. DUNCAN: Thank you, Your Honor.

4             Secondly, under the terrorism enhancement that we have  
5     been discussing this morning, as we noted in our objections,  
6     in order for the terrorism enhancement to apply in this case  
7     the Government had to prove that by providing charity through  
8     zakat committees and other charitable organizations, Mr. Abu  
9     Baker intended to influence or affect the conduct of  
10    Government by intimidation or coercion. Your Honor, there was  
11    no evidence that Mr. Abu Baker intended any such thing.

12            Although this the presentence report is full of  
13    accusations that Mr. Abu Baker and other Defendants provided  
14    charity in order to, and I quote, "Rid Palestine of the Jewish  
15    people through violent jihad," the Government offered not a  
16    shred of evidence to support that allegation. The Government  
17    did not point to a single conversation, a piece of writing,  
18    anything from Mr. Abu Baker where he advocated violence  
19    against the State of Israel, against Jewish people, against  
20    anyone. So the suggestion that somehow by the very fact that  
21    Hammas is a designated terrorist organization Mr. Abu Baker  
22    should be held liable for the terrorism enhancement, it is  
23    just an unfounded allegation.

24            The only thing the Government or the presentence report  
25    points to to support this allegation that Mr. Abu Baker had

1 such intent was the Philadelphia meeting and its discussion of  
2 opposition to the Oslo Accords. And as Your Honor heard  
3 throughout the trial there were many people who were opposed  
4 to the Oslo Accords; not because they supported Hamas, but  
5 because they felt that the Oslo Accords were unfair to the  
6 Palestinian people. And Your Honor heard of Edward Said, who  
7 was a Christian Palestinian, who was opposed to the Oslo  
8 Accords for that very purpose.

9 So to say that opposition to an agreement that was  
10 perceived by many to be unfair to a nation means that you had  
11 the intent to coerce, intimidate, or destroy another people,  
12 it is simply a baseless argument and it is not a basis for  
13 application of the terrorism enhancement in this case.

14 The evidence shows that Mr. Abu Baker, through the Holy  
15 Land Foundation, provided charity to people in need in  
16 Palestine. And the jury found that some of those charities  
17 were affiliated with Hamas. The Government proved no more  
18 than that at trial, and the enhancement does not apply.

19 THE COURT: Thank you.

20 Mr. Jonas?

21 MR. JONAS: I think Your Honor, this is a  
22 no-brainer, frankly. The Government proved that the Defendant  
23 knowingly and willfully provided material support to Hamas.

24 As Your Honor knows, the requirement under 3A1.4 is not  
25 that he himself committed an act of violence, or even

1 supported the specific acts of violence, but that he intended  
2 to influence or affect the conduct of a government by  
3 intimidation or coercion.

4 They provided millions of dollars to a terrorist  
5 organization whose purpose was to intimidate and coerce the  
6 government of Israel, the Palestinian Authority, and  
7 indirectly the government of the United States, as the  
8 Government's evidence proved during the two-month trial.

9 The Defendants knew that. There was abundant evidence  
10 that Defendants knew about Hamas and what they intended to do,  
11 and that they intentionally, knowingly, willfully supported  
12 Hamas. So that alone gets us to the terrorism enhancement.

13 But then to show their specific intent on their own  
14 intention to intimidate and coerce the government of Israel,  
15 the Palestinian Authority, and the United States, is clearly  
16 evident in this Philadelphia meeting in what was said. And  
17 the Government cited several specific examples of quotes just  
18 as a sample. The record is full of quotes from the  
19 Philadelphia meeting where these Defendants and the  
20 co-conspirators intended to derail the agreement.

21 And I understand Ms. Duncan's argument, it was made  
22 during the course of trial, that other people did not like  
23 Oslo, but those other people have not been convicted of  
24 providing material support to Hamas. These Defendants were.

25 So not only did they not like Oslo; they took steps to

1     derail the peace agreement by providing millions of dollars to  
2     Hamas. In other words, they specifically and intentionally  
3     attempted and intended to intimidate and affect the conduct of  
4     a government by intimidation and coercion.

5             I think this enhancement -- I think we are bullseye for  
6     this enhancement. We are right on point.

7             THE COURT: Thank you.

8             Ms. Duncan, anything else?

9             MS. DUNCAN: Your Honor, I mean, it is a two-prong  
10    test. The first is are you convicted of a federal offense of  
11    terrorism, which is the material support offense, if you are  
12    applying the 2002 Guidelines. So what Hamas is, Hamas' status  
13    as a terrorist organization goes to that first prong.

14            The second prong asks what was Mr. Abu Baker's intent.  
15    And the Government throughout trial is just blurring the  
16    intent of people, speakers. And what is at issue here at  
17    sentencing is Mr. Abu Baker.

18            Mr. Abu Baker -- the jury did not find and was not asked  
19    to find that he gave money to Hamas. It was asked to find  
20    that he gave money to organizations affiliated with Hamas. So  
21    for the Government to say that they proved at trial that Mr.  
22    Abu Baker gave money for the terrorist aims of Hamas is simply  
23    not true, and it is not supported by the evidence. He gave  
24    charity to organizations that the jury found were affiliated  
25    with that organization.

1           I mean, other than that we stand on the record. There is  
2 nothing -- The Philadelphia meeting, as we said, it was a  
3 political debate about the Oslo Accords, and to say that  
4 opposition to those accords equals a desire to see people  
5 killed is ludicrous. And to say that there are certain people  
6 at the Philadelphia meeting that what they said should be  
7 attributed to Mr. Abu Baker for his intent is also not  
8 warranted.

9           So for those reasons, Your Honor, we believe that the  
10 terrorism enhancement does not apply to Mr. Abu Baker.

11           THE COURT: And you are still speaking of the 3A1.4?

12           MS. DUNCAN: Yes, Your Honor.

13           THE COURT: Or are you speaking of purchasing?

14           MS. DUNCAN: No, Your Honor. I was talking to the  
15 terrorism enhancement under -- Yes, this is 3A1.4.

16           MR. JONAS: Your Honor, I was speaking of 3A1.4.

17           MS. DUNCAN: Not the weapons; the actual  
18 enhancement, the 12-point enhancement.

19           THE COURT: Okay. And I think it does apply in this  
20 case. I think the evidence does establish -- I am finding  
21 that the evidence does establish that that enhancement does  
22 apply.

23           The evidence in this case established that the purpose of  
24 creating the Holy Land Foundation was to support Hamas. It  
25 was a fundraising arm of the Palestine Committee to support



1      Hamas and its functions, and I don't think we have to rely on  
2     statements made by any of the other individuals, statements  
3     made by Mr. Baker and those with whom he was working at the  
4     HLF. Through the videos at various fundraising functions that  
5     occurred, the wiretapped conversations, the documents that  
6     were seized all show this interlinked connection between the  
7     Holy Land Foundation, Mr. Baker, and Hamas and their support  
8     of Hamas in supporting Hamas and what Hamas' mission was and  
9     is.

10           And so I think the evidence amply establishes, and the  
11     jury's verdict also supports that, that Mr. Baker was in fact  
12     supporting personally through his work with HLF supporting  
13     Hamas, supporting Hamas' mission and function, which included  
14     the terrorism acts that Hamas was engaging in.

15           So I will overrule that objection. That enhancement  
16     properly applies.

17           MS. DUNCAN: And Your Honor, in our sentencing  
18     memorandum we asked the Court to depart from that enhancement  
19     because this case is not within the heartland of cases to  
20     which the enhancement applies, and also because the criminal  
21     offense history --

22           THE COURT: Why don't we save the departure for  
23     later. I know that is going to be part of an oral argument.  
24     There are some other objections you have that go to the --

25           MS. DUNCAN: I actually wasn't going to go into it,

1 Your Honor. I was just going to say that because it all  
2 applies the factors the Court must consider in the sentencing  
3 statute, Ms. Hollander will be discussing that in more detail  
4 later.

5 THE COURT: All right.

6 MS. DUNCAN: The final upward adjustment argued for  
7 in the PSR is the obstruction adjustment. And Section 3C1.1  
8 applies only when the Government proves that the Defendant  
9 willfully obstructed or impeded, or attempted to obstruct or  
10 impede the administration of justice during the course of the  
11 investigation, prosecution, or sentencing of the instant  
12 offense of conviction.

13 Both the Government and the presentence report are  
14 relying on a deposition that Mr. Abu Baker gave in 2003 in the  
15 course of the Boim litigation, which we heard about at trial.

16 First of all, the language the Government is relying upon  
17 to argue that this enhancement applies comes from the 2008  
18 Guidelines. It is not found in either the 2001 or the 2002  
19 Guidelines. So we would argue, first, that that is an ex post  
20 facto violation.

21 Secondly, even if this enhancement in 2001 or 2002 was to  
22 apply to a civil proceeding, a lawsuit between private parties  
23 is not the kind of civil proceeding that the enhancement --  
24 that the Commission was considering. This sort of enhancement  
25 would apply to a civil proceeding that is ancillary to a

1 criminal proceeding; so, for example, an investigation by the  
2 SEC, which is civil in nature. And I believe there is a Fifth  
3 Circuit case in which a Defendant gave a statement to the SEC  
4 during a civil proceeding, and the Court in 2009, Your Honor,  
5 found that false statements made during that civil proceeding  
6 would qualify under 3C1.1 as an obstruction of justice,  
7 because it is a corollary between the two.

8 In this case we are talking about a statement that Mr.  
9 Abu Baker made as a 30(b)(6) witness in a civil proceeding  
10 between a private party and private parties, and so it would  
11 not apply, even assuming that civil proceedings are  
12 incorporated in the rule in 2001, 2002.

13 Moreover, Your Honor, the Government has failed to prove  
14 that Mr. Abu Baker made any false statements during that  
15 deposition. At most what the Government has shown is that  
16 Mr. Abu Baker did not provide as complete answers as they  
17 would have liked.

18 For example, the Government offers the Court that when  
19 Mr. Abu Baker was asked about the relationship between the HLF  
20 and the IAP, Mr. Abu Baker correctly said, "It is a business  
21 relationship. We advertise in their newsletters. We  
22 participated in some of their conventions." That is  
23 absolutely true.

24 What the Government wants this Court to hold against  
25 Mr. Abu Baker for purposes of this enhancement is that Mr. Abu

1 Baker didn't say, "And by the way, ten years ago we were all  
2 part of this loose association called the Palestine  
3 Committee." That is an incomplete answer according to the  
4 Government's standards. It is not a lie and it is not an  
5 effort to obstruct justice. It was a correct answer when  
6 made, and it is just not a basis for application of this  
7 enhancement.

8 And the same is true of the other quotes that the  
9 Government relies on to argue that this enhancement should  
10 apply. They are nothing more than at best an incomplete  
11 answer.

12 And I would note that at the time he gave this deposition  
13 in 2003 he did not have access to the Holy Land Foundation  
14 records, he did not have access to the evidence that the  
15 Government had. And Your Honor saw during this very trial  
16 that Agent Burns couldn't remember something because she  
17 didn't have access to documents she had access to the day  
18 before. It happens to all of us. And so to hold that his  
19 failure to remember certain things in 2003 was, first of all,  
20 false, and second, a willful attempt to obstruct justice in a  
21 civil proceeding, is simply unwarranted.

22 THE COURT: Thank you.

23 Ms. Shapiro?

24 MS. SHAPIRO: Yes. Your Honor, we believe that the  
25 obstruction enhancement applies fully based on both the

1 deposition and the declaration.

2 The deposition, firstly, it wasn't just an omission of  
3 information. There were direct lies. For example, when Mr.  
4 Abu Baker was asked, "Are you aware of any relationship or  
5 involvement that Mr. Abu Marzook had with the Holy Land  
6 Foundation?"

7 Answer: "No."

8 We presented abundant evidence of phone calls, of money  
9 transfers, of a close relationship with Mr. Marzook and the  
10 Holy Land Foundation and Mr. Abu Baker. It was clearly a  
11 false statement and intentional false statement.

12 Not only that, but Mr. Abu Baker was plainly aware that  
13 the Holy Land Foundation was being investigated. There were  
14 phone calls that were introduced at trial where participants  
15 joked about the telephone having a cold. They hired someone  
16 to sweep for bugs in the office. It was clear that they knew  
17 they were under investigation. It was plainly foreseeable  
18 that the FBI would be reviewing that deposition and those  
19 statements by Mr. Abu Baker, and it was plainly a false  
20 statement designed to obstruct.

21 Similarly, the declaration that was submitted in 2002, it  
22 was submitted to a federal judge in Washington, D.C. in  
23 essentially the civil equivalent to this criminal trial. And  
24 in that case it wasn't Mr. Abu Baker appearing pursuant to a  
25 subpoena. He voluntarily submitted a sworn under penalty of

1 perjury declaration to the Court where he made such statements  
2 as "I reject and abhor Hamas," which the evidence abundantly  
3 showed was not true. We showed evidence where Mr. Abu Baker  
4 authored a poem where he praised Hamas. We saw videotapes of  
5 Mr. Abu Baker singing praise of Hamas and dancing. There was  
6 abundant evidence, as the Court has already found, of Mr. Abu  
7 Baker's support for Hamas that those statements in the sworn  
8 declaration were plainly false.

9 In that declaration were also statements about the use of  
10 the word Samah during the Philadelphia conference, which even  
11 in closing Mr. Abu Baker's counsel admitted that those were  
12 not true statements, but he made those false statements  
13 because he was afraid that he would end up in trial like this  
14 one.

15 So I think there is no question that the obstruction  
16 enhancement applies in this case. There is no need for  
17 records to know about support of Hamas or anything like that.  
18 And we would argue for the application of those additional two  
19 levels.

20 THE COURT: Thank you.

21 Ms. Duncan?

22 MS. DUNCAN: First of all, Your Honor, the  
23 declaration is not included in the presentence report, but I  
24 will nonetheless address it.

25 When Mr. Abu Baker said in 2003 that he rejected and

1     abhorred Hamas, what he said was absolutely true. And the  
2     only evidence that the Government is offering to say that it  
3     was false was an article written I believe in the early 1990s  
4     about the situation in Palestine. And it was the byline, not  
5     the body of the argument, that mentioned the word Hamas.

6             So to say that that in 2003 "I reject and abhor Hamas" is  
7     a lie because of a byline in a newsletter in 1990 is simply  
8     not warranted.

9             Secondly, there were no videos of Mr. Abu Baker singing  
10    praise for Hamas. That is simply absolutely not true.

11            And in my closing, Your Honor, I did not say that Mr. Abu  
12    Baker lied. I said exactly what I am saying here today--that  
13    his answers were at best incomplete, and that he may not have  
14    disclosed in those answers that he was at a festival where  
15    someone who was affiliated with Hamas was at in the early  
16    1990s.

17            With respect to the use of the word Samah, that is just  
18    not a material falsehood. I mean, it was a whimsical play on  
19    words that under no definition of obstruction of justice would  
20    that qualify, Your Honor.

21            THE COURT: The Government is relying and Probation  
22    Office on the statements made in the deposition given in a  
23    civil lawsuit. That civil lawsuit was, of course, directly  
24    related. It is a civil lawsuit, as you pointed out, but it  
25    involved suing HLF for Hamas' actions, much as was involved

1 here in this case. Mr. Baker was on trial and was convicted  
2 because of the support he provided to Hamas. So the lawsuits  
3 were related.

4 He had all the incentives to answer the way he did, and  
5 so I think he did give materially false information. And the  
6 evidence that was introduced at trial showed, in fact, that  
7 Mr. Baker is an ardent supporter of Hamas. I think the  
8 evidence shows that.

9 The multiple videotapes and whether he is singing the  
10 praises of Hamas, it is HLF raising money at these functions  
11 where Hamas clearly is present, Hamas clearly is the focus and  
12 the focal point of these fundraisers, and he is there and  
13 other HLF persons are there and they are raising money, HLF is  
14 raising money for purposes of this, both for purposes of  
15 supporting Hamas -- And this is both pre-designation, a lot of  
16 them were pre-designation but there is also plenty of evidence  
17 post-designation.

18 I think the evidence leaves no question that Mr. Baker  
19 was in fact a supporter of Hamas and was raising money for  
20 Hamas at these functions, and that is what he was doing.

21 He did give materially false information, and I think he  
22 did so with the intent to obstruct and impede the criminal  
23 investigation, which by that point they knew was ongoing. The  
24 Holy Land Foundation was shut down in December of 2001. The  
25 assets were frozen. So by 2003 they were well aware. I think



1 by then he had been interviewed, several of the other  
2 Defendants had been interviewed by the FBI. They were aware  
3 of the ongoing criminal investigation. And I believe that  
4 that enhancement is properly applied. I overrule that  
5 objection.

6 Going to your next one, you filed two objections that go  
7 to the money laundering if we did a 2S1.1, the amount of the  
8 laundered funds and then also the sophisticated means  
9 enhancement which would apply if the 2001 manual is used. Do  
10 you want to go ahead and address those?

11 MS. DUNCAN: Sure. Let me pull up that part, Your  
12 Honor.

13 With respect to the amount of the money laundering, Your  
14 Honor, I will stand on our objections.

15 THE COURT: The written objections. Okay.

16 MS. DUNCAN: With respect to the sophisticated money  
17 laundering, we would note that it is pure speculation that the  
18 Holy Land Foundation structured these transactions in order to  
19 evade detection.

20 I mean, they were operating in Palestine. There was  
21 evidence that the banking system and doing business in  
22 Palestine is a complicated endeavor. Holy Land Foundation  
23 opened its offices in Palestine in order to facilitate the  
24 work on the ground, and sent money to those offices. There  
25 was no effort to deceive. And the fact that the Government

1       took a long time to get certain bank records means nothing.

2               The Holy Land Foundation was open throughout its entire  
3       operation about where its money was going, how much money was  
4       going over there. So they structured their transactions in  
5       order to facilitate the transfer of money to people who needed  
6       it in the most effective way possible, and not to thwart any  
7       sort of Government investigation. The Government knew  
8       throughout the entire time that the Holy Land Foundation was  
9       operating where the money was going.

10               THE COURT: Thank you.

11               Mr. Jonas?

12               MR. JONAS: Your Honor, I think as we stated in our  
13       response to Defendants' objections, I will basically in a  
14       nutshell restate that. There was a layering effect going on  
15       here by sending money to their own accounts, which they  
16       established in the later years or existence in the West Bank  
17       and Gaza, impeded the Government's ability to then trace where  
18       the money went from that point further, up until the Patriot  
19       Act when the law gave us the right to get those records. At  
20       the time they were conducting these acts, we wouldn't be able  
21       to get them. And that layering effect that I think the  
22       Guidelines call for is a basis for a sophisticated money  
23       laundering and gives it two levels additional to the base  
24       offense level.

25               THE COURT: Thank you.

1 Ms. Duncan?

2 MS. DUNCAN: Your Honor, every transaction that the  
3 Holy Land Foundation sent over to its office in Gaza or in the  
4 West Bank was accompanied by a fund transfer notification that  
5 listed every single organization to whom that money was to be  
6 given. The Government was wiretapping the Holy Land  
7 Foundation that whole time. They just argued that this Court  
8 should find Mr. Abu Baker liable for the obstruction of  
9 justice enhancement because he knew that they were under  
10 investigation. So they can't have it both ways.

11 THE COURT: Except that that enhancement, though, is  
12 in 2003. They have seized the records. This enhancement for  
13 obstruction of justice happened in 2003.

14 MS. DUNCAN: They are arguing -- what Ms. Shapiro  
15 argued --

16 THE COURT: They were saying that he knew of the  
17 investigation certainly since 2001.

18 MS. DUNCAN: Right. But she was arguing that there  
19 was evidence at trial during the relevant period up to 2001,  
20 there were phone calls that indicated they knew they were  
21 under scrutiny, and you heard a lot of evidence about that.

22 You saw every single transfer to Palestine was documented  
23 where it was going to go. The fund transfer notifications  
24 would say this amount of money is going to our office in West  
25 Bank, and then it should be distributed to these certain

1 people, so there was no effort to hide. The Government knew  
2 where that money went. For them to say now, "We didn't know,"  
3 that is not true. They have those records from the second  
4 that they were sent from the Holy Land office in Richardson,  
5 Texas to the Holy Land offices in Palestine.

6 THE COURT: I agree with Probation as they  
7 calculated this enhancement. There was layering, as the  
8 Government has pointed out, I think even going through these  
9 zakat committees, that there were clearly efforts to try to  
10 hide the trail of money. They weren't sending checks directly  
11 to Hamas, even though the evidence shows that that is what the  
12 money was for was to support Hamas. So I think the structure  
13 of the entire operation that HLF was involved in was designed,  
14 in part, to obstruct or to keep agents from discovering what  
15 was going on there with HLF.

16 I will overrule that objection and find that that  
17 enhancement is properly given.

18 And also the amount of the money laundering, I think that  
19 is properly given. That is properly calculated. You are  
20 arguing that it should be strictly the amounts that were  
21 alleged in the indictment. Of course the Government is not  
22 limited to that. The evidence presented -- And I think  
23 Probation is actually right in terms of \$16 million versus the  
24 \$12 million, because even the funds that were used based on  
25 the evidence that was presented at trial, even the funds,

1     there is some \$4 million there that apparently can't be  
2     accounted for, and so that is where the difference between the  
3     \$12 million and \$16 million is.

4             But as Probation points out in its addendum, that money,  
5     even assuming that it went to some legitimate purpose, all of  
6     that, the intent of all the entire operation of the Holy Land  
7     Foundation was to support Hamas. And so all of it I think is  
8     properly used in the calculation of the laundered funds,  
9     because the sole purpose of the Holy Land Foundation was to  
10    provide financial support for Hamas. That is what the  
11    evidence establishes in this case.

12            So I will overrule the objection with respect to the  
13    amount of the money laundering as well. I think Probation  
14    accurately calculated that.

15            Are there any other objections that affect the  
16    calculations of the Guidelines that you want to address?

17                   MS. DUNCAN: I don't believe so, Your Honor.

18                   THE COURT: Okay.

19                   MS. DUNCAN: I think the remainder of our objections  
20    were to the factual allegations.

21                   THE COURT: And I think a lot of those, of course,  
22    they overlap with what we have stated here, and I think my  
23    statements have covered those as well. I think Probation, to  
24    a large extent, there is some small, perhaps, statements that  
25    are not completely accurate, but in terms of capturing the

1     gist of what the evidence shows was occurring here with the  
2     Holy Land Foundation, I think the Probation Office correctly  
3     captured that in its reports.

4             So those objections have been overruled, and I will  
5     accept, then, the findings of the Probation Office as  
6     contained in their presentence report, and also the addendum  
7     and the second addendum to the report.

8             And with respect to Mr. Baker, we have a Guideline  
9     offense level, in effect, of 43 because of the calculations,  
10    and then a Criminal History Category of VI, a Guideline range  
11    of up to life in prison.

12            And I will hear from -- Are you finished with your  
13    objections?

14            MS. DUNCAN: Yes, Your Honor. I mean, I do have a  
15    short thing to say about the downward departure request.

16            THE COURT: I will give you an opportunity about  
17    that, to address the sentencing issue in its entirety.

18            Ms. Hollander?

19            MS. HOLLANDER: Thank you, Your Honor. Your Honor,  
20    what I would like to address is the sentencing statute, 18  
21    U.S.C., 3553.

22            As the Court of course is well aware, the Guideline range  
23    is not necessarily reasonable. This Court cannot presume that  
24    it is reasonable. It is only one factor to be considered post  
25    *Booker* and the other Supreme Court cases.

1           And what I would like to talk about is the other factors  
2           that are in 3553(a). And let me start with the fact that the  
3           statute says, and I quote, "There is the need to avoid  
4           unwarranted sentence disparities among defendants with similar  
5           records who have been found guilty of similar conduct."

6           Now, in fact, there aren't any that are really similar to  
7           this. We gave the Court some cases in our brief of people who  
8           have received much lower sentences than these Guidelines who  
9           have committed violent acts or have attempted to commit  
10          violent acts under the same statute.

11          And I would like to just point out two examples; one that  
12          is not a U.S. case, but I think is significant, and that is  
13          the case of Mr. Raed Salah who was tried in Israel. Your  
14          Honor may remember that the Government witness who went by the  
15          name Avi said that he learned, got his experience by working  
16          on a case of Mr. Raed Salah, who was convicted of providing  
17          material support to the Islamic Relief Service in Israel. And  
18          that was a case that went on for many years. Avi talked about  
19          it, and talked about what he learned from that case.

20          Mr. Salah received a sentence from the government of  
21          Israel of slightly under five years for that, a case that is  
22          significant because it is so much lower than what the  
23          Government is asking for and Probation Office is asking for in  
24          this case.

25          The other example which is closer to home and involves

1     this Government is a very recent example of Ali Al-Marri. Ali  
2     Al-Marri came to the United States on September 10th, 2001,  
3     one day before September 11th, and has now admitted that he  
4     came as an Al-Qaeda sleeper agent, that he came for the  
5     purpose of committing more terrorist acts, that he was working  
6     with a man named Khalid Sheikh Mohammed who the Government  
7     claims and I believe has admitted that he was the architect of  
8     9/11.

9             Mr. Al-Marri has admitted these facts and additional  
10            facts in his plea agreement. I believe that plea agreement is  
11            actually attached to one of the other sentencing memoranda.

12            But the Government of the United States has agreed that  
13            Mr. Al-Marri can plead guilty to a maximum of 15 years. This  
14            is a man who this Government alleges and has now admitted that  
15            he came to this country as a sleeper agent to commit violent  
16            acts against this country of the very worst kind, and the  
17            Government of the United States believes that 15 years is a  
18            sufficient sentence for that person.

19            So that alone makes this proposed sentence, if you look  
20            just at the Guidelines, to just be preposterous for these  
21            Defendants who are not accused -- My client is not accused of  
22            any violent act, of committing any violent act, nor is there  
23            any evidence that he ever espoused any violent act.

24            He is convicted of providing charity to organizations  
25            that the Government alleges were and the jury found were



1 associated with Hamas. And that is what he -- That is what he  
2 was convicted of. And Your Honor is required under the  
3 sentencing statute to take into account whether his sentence  
4 is disparate to others. And there were others listed in our  
5 brief.

6 I would also like to point out one of the other factors  
7 that the Court must consider under 3553, and that is the  
8 nature and circumstances of this offense. And I understand  
9 Your Honor's position that you stated and the Government's  
10 position, but there is no denying that the bottom line here is  
11 that they provided -- Shukri Abu Baker through Holy Land  
12 provided charity to zakat committees, which the jury found  
13 were associated with Hamas. The Government has consistently  
14 blurred this, and throughout their pleadings blur this and say  
15 that they gave their money to Hamas, they gave their money for  
16 the purposes of Hamas' military wing.

17 That is not what was found in this case, nor even what  
18 was alleged in this case. It was that they gave funding to  
19 these zakat committees, which were found to be associated with  
20 Hamas, and that is a significant distinction.

21 Whatever Hamas' intent is and Hamas' violent agenda, that  
22 is essentially the Government's rhetoric here, but it is not  
23 the evidence in this case, and there is no evidence whatsoever  
24 that by giving that money to those charities, that that is  
25 what Mr. Abu Baker intended.

1           In fact, the Government goes so far as to say in their  
2       brief that because Holy Land gave money to these zakat  
3       committees, that that led to Hamas winning election five years  
4       later in 2006, even though Holy Land closed down in 2001. And  
5       if in fact that is their position, and if in fact it is the  
6       position, as Ms. Shapiro stated here today, that the  
7       Government knew about Hamas and its intent in 2001 when it  
8       froze Holy Land's funds, and that the case where the funds  
9       were frozen was a civil equivalent of this criminal case, that  
10      the Government knew at that point and stated at that point  
11      that these zakat committees were associated with Hamas, then  
12      the Government of the United States is responsible for Hamas  
13      winning that election, because the Government of the United  
14      States continued to fund those same zakat committees all the  
15      way up to at least 2004, December, which was almost a year and  
16      slightly more than just before the time Hamas won that  
17      election.

18           And we introduced the evidence, and I will just give one  
19      example, which was Defendants' Exhibit No. 1074, a CAIR  
20      implementation report which showed that the United States  
21      Agency for International Development gave \$47,000 to the  
22      Qalqilya zakat committee in 2004. And that, Your Honor, means  
23      that the United States government either didn't believe that  
24      these zakat committees were associated with Hamas, or is  
25      responsible for supporting Hamas in all the ways and with all

1 the same intent that the Government attributes falsely to  
2 Mr. Abu Baker.

3 There is no doubt that the Palestinian people were in  
4 desperate need. The Government's experts admitted that. The  
5 Government's experts admitted that the Palestinian people  
6 needed the charity that was provided to them. So there is no  
7 doubt that what Mr. Abu Baker was doing was providing charity  
8 that was necessary, and the Government's evidence supports  
9 that.

10 I want to talk about, and that leads me to one of the  
11 next factors that Your Honor must consider, and that is the  
12 history and characteristics of the Defendant. And that is a  
13 quote again from -- I am quoting from 3553(a).

14 Mr. Abu Baker, and there is no doubt of this either, has  
15 devoted his life to helping others in his community and in the  
16 world community. And there is no doubt that he has raised his  
17 daughters to be productive citizens and to support their  
18 community and to work in their community.

19 We have provided the Court with many, many letters, and I  
20 have to assume that Your Honor has seen those letters. We  
21 provided a chart -- Because we knew there were so many letters  
22 of support, we provided them in a chart with kind of what we  
23 consider the most important quote from each one to make it a  
24 little easier for you to remember who said what. And I am not  
25 going to repeat those here, because I believe Your Honor has

1     seen those.

2             But those were people who were touched by Mr. Abu Baker  
3     in one way or another; school children, people in the  
4     community, old people, people who benefited from his  
5     counseling and benefited from the work he did and benefited  
6     from the work he did with his hands to plant trees and build  
7     buildings.

8             And this is what he has done with his whole life. This  
9     is what he has done, and that is why so many people in this  
10    community were willing to write letters in support of him and  
11    to stand up and say publicly in front of this Court that this  
12    is the person Mr. Abu Baker is.

13            He is also very much a hands-on father, very involved  
14    with his daughters with their school, gave them advice, helped  
15    them. His eldest daughter is getting a Master's degree in  
16    counseling. He has worked hard to make sure his children were  
17    well-educated. He spent lots and lots of time at their  
18    school. He helped develop their school and make sure that it  
19    was a good school and spent time in the classroom with them.

20            And he also has a very special relationship with his one  
21    daughter who suffers from two devastating illnesses. And as  
22    he will tell you, his daughter's illness and the wonderful  
23    care that she received because they lived in the United States  
24    is what really prompted him to want to see that other children  
25    could get some of the benefits of this, even though they

1     didn't have the benefits of our medical system, which has  
2     saved his daughter's life; a child who no one thought would  
3     live past a year or two, is still alive, still here, still in  
4     this courtroom going to college because of the care she  
5     received and because the care she received from her father,  
6     who has spent untold hours in the hospital where she has to go  
7     almost once a month throughout her I believe 19 or 20 years.

8             The Government wiretapped his home, his office,  
9     everywhere he was for eight years, and they produced not one  
10    sentence that says anything against the Jewish people or any  
11    other people, not one word of violence, not one word in all  
12    those years of wiretapping phones and offices and emails and  
13    reading everything. And if there had been one word, we would  
14    have seen it.

15            He worked to support the Palestinian people. There is no  
16    denying that. There is no denying that need. And yet, Your  
17    Honor, the Government's brief makes no mention of 3553(a). It  
18    is based strictly on the Guidelines. And although the Court  
19    is to start with the Guidelines, and the Guideline range is  
20    one of the factors, it is only one factor, and the Court is  
21    required to consider all of these other factors, none of which  
22    the Government even mentions.

23            The Government -- If you read the Government's brief, you  
24    would think that *Booker* and all the cases that came after it  
25    never even happened, and yet that has been the law of this

1 country for the last few years.

2 The job of an Assistant United States Attorney is not to  
3 convict people. The job of the Assistant U.S. Attorney and  
4 the Justice Department is not to win cases. The job of the  
5 U.S. Attorney and his assistants is to do justice and to do  
6 the right thing. Those are not my words, Your Honor. Those  
7 are the words of Eric Holder, the Attorney General of the  
8 United States, in speaking to his Assistant U.S. Attorneys,  
9 and that is what he has told them to do.

10 If the Government won't do the right thing here, Your  
11 Honor, if the Government will not depart way below these  
12 Guidelines and consider the other factors in 3553 that must be  
13 considered under the Supreme Court law in this country, then  
14 this Court must do it. And this Court is obligated, as I am  
15 sure Your Honor knows, to sentence Shukri Abu Baker according  
16 to that statute as upheld by the United States Supreme Court  
17 and as required by the Justice Department to a sentence that  
18 is, and I quote, sufficient but not any greater than  
19 necessary. That is the Court's obligation and that is what we  
20 ask the Court to do.

21 THE COURT: Thank you.

22 Mr. Baker, you are entitled to speak if your behalf. Is  
23 there anything you wish to state?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: You may do so.

1           THE DEFENDANT: I wish, Your Honor, that you bear  
2 with me. This is a last-minute decision to speak. I didn't  
3 have much time to rehearse, but I know you are going to bestow  
4 upon me your kindness and the opportunity to express my  
5 feelings and my beliefs in this occasion.

6           In the name of Allah, the compassionate and merciful.  
7 Good morning, Your Honor.

8           This day the 27th is indeed a special day for me and my  
9 family and my friends. This week is also special because it  
10 marks my 27th week in prison. And this month, Your Honor, is  
11 extra special because it marked the 27th anniversary of my  
12 blessed marriage to my great wife Wejdan, so it is something  
13 with the number 27.

14          But it was February 3rd, 1959 when I was born to a mixed  
15 couple in Catanduva, Brazil, South America. My mother Zaira,  
16 who is 71 years old, was a first generation Brazilian child of  
17 a Catholic Italian immigrant couple, Mr. and Mrs. Guerzoni,  
18 Maria and Senor Ugu Guerzoni.

19          My father, Mr. Ahmad Abu Baker, who is 79 years old, was  
20 born to a Palestinian people in the West Bank Palestine. He  
21 immigrated to Brazil in 1952 in pursuit of a better life.

22          From the beginning I was a product of a love story  
23 between a dark-skinned, brown-eyed Muslim/Palestinian  
24 immigrant and a white, green-eyed, blond Catholic/Brazilian  
25 citizen. That is a blessing to start with. I am so blessed.

1 Two different worlds fusing into one, and I was a product of  
2 that, that is a blessing.

3 And I was second in order to three other brothers.

4 In 1965 my father decided to return back to his homeland  
5 and the trip took us one whole month by sea.

6 In 1967 the Six Day War broke and I got to witness  
7 firsthand the ugliness and the horror of war as we hid for  
8 several nights in a cave in the heart of a mountain. Soon  
9 thereafter, I saw total strangers marching the narrow streets  
10 of our village with strange and scary looking military gear.

11 Later we settled in Kuwait, and I graduated from high  
12 school in 1977, only to start my forever departure from the  
13 Arab and the Muslim world into the lands of liberty, the lands  
14 of freedom, the United Kingdom and then later on the United  
15 States of America.

16 I attended college in the United Kingdom. Then in  
17 January 1980, Your Honor, I set foot in this blessed land when  
18 I transferred to a college near Sanford, Florida, where most  
19 of my paternal relatives had been living since early '50s.

20 I got married to Wejdan on May 2nd, 1980, while I was  
21 still in college.

22 On November 3rd, 1983, my first child Zaira was born, and  
23 I named her after my mother.

24 On the day of my closing statement, November 10th back in  
25 1984, my son Mohammad was born. Apparently he had arrived



1     this world with a return ticket that had to be used within  
2     five months, and he did. Watching my child die in a hospital  
3     crib proved to be the most painful and everlasting experience  
4     for me and beloved Wejdan.

5             After burying a piece of our flesh in the soils of  
6     Chicago, we moved to Indianapolis, Indiana. It wasn't until  
7     the birth of our third child, now it is two years later, that  
8     I had started to realize where my new destiny was taking me.  
9     On March 25th, 1987, Sanabel was born. "Wow, she is such a  
10    big girl," said the nurse. "She weighs 9 pounds and 7 ounces,  
11    and she is adorable. Proud, dad?" added the nurse. And she  
12    was absolutely right. And we named her Sanabel, which means  
13    weed spikes, a Quranic indicative of goodness, wholesomeness  
14    and abundance.

15            But as bad news tends to be enveloped in the state of the  
16    unexpected, Your Honor, a routine blood test in November  
17    revealed a horrible message in the most abrasive and blunt  
18    way. We were told that our pretty and chubby girl had arrived  
19    this world with two chronic and incurable diseases, two  
20    elements of death entrenched in her body from day one of her  
21    birth--Cystic Fibrosis and Thalassemia Major.

22            In a nutshell, most of her body functions were afflicted  
23    severely afflicted, respiratory, digestive, reproductive, and  
24    even her own ability to produce her own blood. Thus, we were  
25    advised by the doctors that her life expectancy was only 12

1       years. That is if she got lucky. And she did.

2               Realizing the gravity of her medical situation, Sanabel  
3       was admitted to Children's Medical almost immediately. And  
4       being the only child in the state of Indiana in her condition,  
5       she received superb and unparalleled medical attention.

6               And while our attention was glued on Sanabel, there the  
7       world's attention was being drawn to another travesty, but one  
8       that involved the lives of millions of people that was taking  
9       place thousands of miles away--the Palestinian uprising, the  
10      Intifada of 1987, December 8, 1987. People took off to the  
11      streets throwing stones at Israeli soldiers protesting 20  
12      years of Israeli occupation.

13              Like most Americans, I learned about the uprising through  
14      the eyes of the media. I remember sitting next to Sanabel in  
15      her hospital room watching the news. I still can remember  
16      some of the disturbing images of children being beaten by  
17      soldiers, crushing their bones by a big piece of stone, and  
18      under the heavy blows of military batons. That was on CNN.  
19      It is not my own imagination. Demonstrators received live and  
20      rubber bullets; ambulances and their personnel chaotically  
21      trying to pick up the wounded amidst the heavy and blinding  
22      smoke of tear gas canisters.

23              I was shocked and sickened. I have seen demonstrations  
24      in this country, but I have never seen the police shoot to  
25      kill in response. However, that was not the dominant thought

1     that was preoccupying my mind in relationship to the uprising.  
2     The profound one was the comparison that I started to make  
3     between the care my own child was receiving in her own country  
4     and that was afforded to her counterparts in their home  
5     country.     For some reason I started to feel more guilty than  
6     relieved.

7             My conscious became restless.     I felt as if humanity had  
8     two opposite faces--the face of mercy that manifested in the  
9     care my daughter was receiving in the U.S., and the face of  
10    cruelty that manifested itself in the way Palestinian children  
11    were being treated in their homeland.

12            Now, I had two realities to ponder upon--a reality that  
13    was evolving in front of my own eyes, my own lap, my own  
14    shoulder, that is Sanabel, and reality that presented itself  
15    in my father's homeland thousands of miles away.     I started to  
16    dwell on the question why do people have to suffer  
17    unnecessarily.     Why couldn't the care of my child was  
18    receiving in this country be extended to children who were  
19    disadvantaged by political and economic realities?     Why not?  
20    My moral values etched in my heart a very strong belief that  
21    the great care Sanabel and her American children were  
22    receiving in this great country should be afforded to children  
23    of the less fortunate world by virtue of them, too, being  
24    children of God, worthy of living and thriving.

25            But how?     That is when God's loving hands pointed my

1 attention to the amazing observation. I was utterly surprised  
2 to discover the non-profit network that was there all the  
3 time, providing moral, educational, financial, and even  
4 medical assistance for support and us as her family. I have  
5 never been in a position before to be exposed to the immensity  
6 of the non-profit and charitable structure in this country.

7 It was mind-opening for me to find that the very  
8 hospital, Children's Hospital in Indianapolis, now they  
9 changed it to Riley hospital, was a non-profit organization  
10 indeed, a charitable organization. What a discovery. So I  
11 thought, just like America has been exporting technology and  
12 commodities to the world, it is time, it was time to start  
13 exporting expertise on non-profits and charitable Ventures.  
14 This explains, Your Honor, for example, why I made sure that  
15 the HLF kept emphasis on hospitals, clinics, and health  
16 services at large, including the Al-Salam Hospital in Khan  
17 Yunis, Gaza.

18 By this point in time I was occasionally participating in  
19 the collection of donations in response to some needs here and  
20 there through some ad hoc committees, but that was more of an  
21 impulsive and reaction than a well-thought out action.  
22 Sanabel's situation allowed me to think of charity in a whole  
23 new dimension. I started to believe that God had a message  
24 for me in the seemingly unfortunate events in my life from the  
25 death of my own child Mohammad to the ailment of my daughter

1 Sanabel.

2 God wanted me to find a silver lining to discover the  
3 bigger world in me and to assume a bigger life, and I call  
4 this, Your Honor, the Sanabel awakening. This is all I needed  
5 to start shifting my life into higher plane. I did not need  
6 any other argument or purposes to put me in that direction.  
7 It was already happening in my heart and mind. As the Bible  
8 says, "As a man thinks in his heart, so he becomes." And when  
9 the intention is clear the methods show up.

10 Early in 1990 I started the first HLF office, being the  
11 only full time employee. I remained in my job until closure  
12 on December 4th, 2001.

13 Regardless of what my opponents may claim, the facts  
14 speak for themselves. We are multidimensional beings, and  
15 personal experiences in life have profound impact on our  
16 decisions. As holocaust survivor Dr. Viktor Frankl said in  
17 his book Man's Search For Meaning, "No man and no destiny can  
18 be compared with any other man or destiny. No situation  
19 repeats itself, and each situation calls for a different  
20 response."

21 My commitment to charity was a product of my own  
22 suffering as a father. I played no role in timing my  
23 daughter's birth and her diagnosis to coincide with a historic  
24 event in the Palestinian-Israeli conflict. I did not.  
25 Sanabel was real and her situation is real, and my wife and I

1     were swallowing our own tears as we strapped her to her  
2     cushion board every night to painfully change her central line  
3     dressing. I was there. My accusers were not there, Your  
4     Honor. I was there inserting the empty tubing all the way  
5     down from her nose to her stomach twice a day to force some  
6     liquid food into her frail body. My accusers were not there.

7             Neither were they there when Wejdan and I slipped in fear  
8     dreading the thought that the next morning could spill another  
9     encounter with death in our family. They were not there.

10            So it is easy, it is the easy, Your Honor, to demonize  
11     your opponent if you lack the knowledge about the real human  
12     inside of them and the real human suffering around their life.  
13     Because of Sanabel my life changed, and, I am proud to say, so  
14     did the lives of countless people.

15            It was not rage against Israel or passion for Hamas that  
16     had placed me in the realm of charity. Rather, it was the  
17     father's heart reaching a melting point, a melting point as  
18     his own child suffered in front of his own eyes. As she sat  
19     on my lap coughing and wheezing feverishly, when she was in  
20     pain or fear, especially during endless needle poking to get  
21     an IV or draw blood, she screamed, desperately screamed and  
22     cried for help while squeezing my supportive fingers; these  
23     very fingers that signed the checks to relieve and alleviate  
24     the suffering for children all around the world. Witness  
25     these fingers, and God is my witness.

1 Her screams were louder, and I swear were much louder in  
2 my conscience then the roaring of Israeli jet fighters, and  
3 much, much louder than the fiery rhetoric of Palestinian  
4 leaders.

5 Her fever kept Wejdan and I up all night, but my mind  
6 often tried to compensate for the suffering by thinking about  
7 ways to alleviate the suffering of less fortunate children;  
8 children who had no fingers to squeeze on and no shoulders to  
9 cry on, forgotten and abandoned amidst the darkness of their  
10 own helplessness.

11 It was not hate for Israel or passion for politics that  
12 drove my destiny. Sanabel's entire life had been a symphony  
13 of suffering and pain, and God helped me to remix that  
14 symphony into a mix of relief and hope for so many people  
15 around the globe. This is how HLF transcended, raised  
16 politics and religion. And the more Sanabel triumphed and  
17 showed resilience to her killer diseases, the more energetic I  
18 became and the more resolve I became. The more she fought  
19 back and clung to life, the more I fought the impossible to  
20 help others cling to their life.

21 I had traveled the corners of the world to do God's work,  
22 and I met face to face with the subjects of my work. I cried  
23 with them, and for them I listened passionately to their  
24 stories, and I held the babies on these arms against this very  
25 chest. I toured their makeshift homes and open sewage streets

1 with these feet. I did it because I cared, because I am a  
2 human being, too; not in the behest of Hamas and not to  
3 promote a Palestinian group over another, or either not to  
4 instigate the afflicted against the Israelis, not in  
5 Palestinian or Lebanon or Bosnia or Oklahoma City, or even in  
6 downtown Dallas or in Turkey or Kosovo or Chechnya or Jordan.

7 THE COURT: Mr. Baker, you have now used almost 15  
8 minutes and you have made your point, and you need to finish  
9 up here in the next minute or two.

10 MS. HOLLANDER: Your Honor, with all due respect, I  
11 believe that Mr. Abu Baker would like to finish what he has to  
12 say.

13 THE COURT: I don't mind him finishing, but I don't  
14 know how long he is going to go, and I don't want to go all  
15 morning, counsel. He is not entitled to do that.

16 MS. HOLLANDER: He is not going to go all morning.

17 THE COURT: How long is he going to go?

18 MS. HOLLANDER: I believe he has maybe ten more  
19 minutes and he will be finished.

20 THE COURT: I will give you five more minutes. You  
21 can finish in five minutes; five minutes, counsel.

22 THE DEFENDANT: Thank you, Your Honor.

23 MS. HOLLANDER: Your Honor, just for the record, we  
24 do object to the Court interrupting Mr. Abu Baker. He has a  
25 right to make his statement. He is being sentenced to a very



1 long time, and we object to the Court's interrupting him.

2 THE COURT: That objection is overruled. Any other  
3 statements, Ms. Hollander, from you or Ms. Duncan?

4 MS. DUNCAN: No, Your Honor.

5 THE COURT: Mr. Jonas, or who is speaking? Ms.  
6 Shapiro?

7 MS. SHAPIRO: Your Honor, I just want to return for  
8 a moment to the evidence that was presented at trial, because  
9 Mr. Abu Baker and counsel ignore the evidence that was  
10 introduced at trial showing that this was not a legitimate  
11 charity that accidentally sent a few wire transfers to the  
12 wrong committees.

13 The evidence showed, contrary to Mr. Abu Baker's  
14 statement, that this was a deliberate design, plan, and scheme  
15 to support Hamas from the United States. The Elbarasse  
16 documents show us that the Holy Land Foundation was set up as  
17 part of a larger organization to the Palestine Committee. It  
18 was designed to be the money operation for Hamas in the United  
19 States for the Palestine Committee, whose larger mission was  
20 to support Hamas.

21 That plan was to exploit the American public's generosity  
22 and empathy, to collect donations, and to put that money into  
23 the hands of Hamas and specifically into the hands of Hamas'  
24 social wing, the base on which the entire Hamas organization  
25 was built. All of this was done to promote Hamas and its

1 objectives, objectives which the Defendants, including Mr. Abu  
2 Baker, were well aware.

3 They were well aware of the violence that Mr. Hamas  
4 employed, and the evidence of this was breathtaking and  
5 presented at trial. There were the Elbarasse documents  
6 showing the organizational structure and design of the  
7 Palestine Committee. There were videotapes showing the  
8 Defendants' support for Hamas, including Mr. Abu Baker,  
9 showing him dancing with children on the stage as songs  
10 praising Hamas were being sung. There were tapes showing the  
11 brainwashing of children. We saw evidence that children were  
12 being indoctrinated to support hatred.

13 We saw the Philadelphia conference where they spoke about  
14 undermining the Oslo Accords and the need to conceal their  
15 activities. They spoke about deceiving the American public,  
16 about the need to talk to the American public about things  
17 they understand like civil rights because Americans could  
18 relate to that. They talked about how war is deception--fake  
19 left look right.

20 There were phone calls, contacts, conferences with major  
21 Hamas leaders. There is Mohammed Siam, Abdullah Azzam,  
22 Mahmoud Zahar, and Jamil Hamami just to name a few, the upper  
23 echelon of the terrorist organization. There was evidence of  
24 the spiritual leader Sheikh Ahmed Yassin covering up for the  
25 Holy Land Foundation when a reporter from the Dallas Morning

1     News interviewed him.

2             We heard Mohamed Shorbagi who is a supporter of Hamas, an  
3     insider, talk about how the Holy Land Foundation was Hamas,  
4     how the money that went to the Holy Land Foundation, that he  
5     knew that that money would go into the hands of Hamas.

6             There were wire transfers showing the clear pattern of  
7     money going to Hamas' social wing through the zakat  
8     committees. There was evidence showing the concealment by  
9     routing it through the zakat committees and routing it through  
10    their own accounts overseas so it couldn't be traced.

11            If Mr. Abu Baker wanted to commit himself to a life of  
12    charity, he should have done it without providing that charity  
13    to a terrorist organization.

14            We all feel for the family and the dependents of Mr. Abu  
15    Baker. Nobody wants the family and dependents to suffer. But  
16    for a long period of time this Defendant and others engaged in  
17    conduct that put their dependents at risk. Mr. Abu Baker is  
18    responsible. He engaged in this conduct over the course of a  
19    decade.

20            We understand of course, Your Honor, that the Guidelines  
21    are advisory, and with respect to other cases that Ms. Duncan  
22    cited, with respect to Mr. Raed Salah, of course, he was  
23    sentenced in another country, completely different punishment  
24    structure. He also pled guilty to a lesser charge. The case  
25    of *el-Masri* presented unique circumstances with respect to

1 Guantanamo. And in addition, he also pled guilty to a charge  
2 that capped at 15 years.

3 Mr. Abu Baker has not pled guilty, has not taken  
4 responsibility, and we think that the evidence at trial, Your  
5 Honor, speaks for itself.

6 THE COURT: Thank you.

7 Ms. Duncan or Ms. Hollander, any further statements?

8 MS. HOLLANDER: Your Honor, once again, if the  
9 problem here is that Mr. Abu Baker gave charities to the  
10 wrong -- gave money to the wrong charities, then I submit that  
11 the United States government continued to do that for years  
12 afterwards through USAID to the same charities. The  
13 Government refuses to acknowledge that this was evidence in  
14 this case, and refuses to acknowledge that this same  
15 government didn't have to agree to let Mr. Al-Marri, a sleeper  
16 agent for Al-Qaeda, plead to 15 years. The Government didn't  
17 have to agree that that individual should get out of jail even  
18 though he admitted to planning terrorist acts.

19 And the Government has said that they understand that the  
20 Guidelines are only one factor, but if you read everything  
21 that they have said, all they have focused on are the  
22 Guidelines, as though the United States Supreme Court did not  
23 speak to them.

24 I repeat, Mr. Eric Holder, who is their boss, has said it  
25 is not their obligation to convict. It is their obligation to

1 do what is right.

2 In 30 years of practicing law, Your Honor, in 30 years of  
3 standing before courts and in sentencings, I have never heard  
4 the Government allocute with such vitriol as I have heard in  
5 this case. I have never heard the Government repeat  
6 testimony, as they did in this case, and I think that the  
7 Government -- It is up to this Court now to do what is right  
8 and to sentence my client to a sentence that is well below the  
9 Guidelines in this case.

10 THE COURT: Okay. Thank you.

11 Well, I have accepted the findings of the Probation  
12 Office as contained in the presentence reports and the  
13 addendums.

14 It will be the judgment of the Court -- We have these  
15 multiple counts. It will be the judgment of the Court, Mr.  
16 Baker, that you be sentenced to 15 years in the custody of the  
17 U.S. Bureau of Prisons on Count 1; 15 years on each of the  
18 next 9 counts, 2 through 10, and those will run concurrent  
19 with each other and concurrent with Count 1. And then you  
20 will be sentenced to 10 years on Count 11. That will run  
21 consecutive to Counts 1 through 10.

22 You are sentenced to 10 years on Counts 12 through 21.  
23 Those will run concurrent with all the other counts. You are  
24 sentenced to 20 years on Count 22. Those will run consecutive  
25 to Counts 1 and 11. You are sentenced to 20 years on Count

1     23. That will run consecutive to Counts 1, 11, and 22. You  
2     are sentenced to 20 years on Counts 24 through 32. Those will  
3     run concurrent with all of the other counts; five years on  
4     Count 33 to run concurrent with all of the counts; three years  
5     on Count 34 to run concurrent with all of the counts.

6             Your total sentence is 65 years when you add the  
7     consecutive counts.

8             A further judgment of the Court that that will be  
9     followed by a three-year term of supervised release on the  
10    various counts, they carry three years; one year on count 34.  
11    Those will all run concurrently. You will have certain  
12    conditions that the Probation officer will explain to you.

13            I will not order a fine in this case in light of your  
14    financial circumstances and the length of the sentence.

15            Restitution does not apply.

16            There is a \$100 per count mandatory special assessment  
17    that has to be imposed in each case. That will be imposed in  
18    your case for a total of \$3,400.

19            I need to make a statement in terms of the reasoning for  
20    the sentence, Mr. Baker, you and your attorneys of course  
21    presented the defense that your life's work was helping  
22    others, the charity that you were involved in, but the problem  
23    with that is it doesn't tell the whole story; that the  
24    evidence presented that was played out here over the two  
25    months we were here in trial, as shown by the evidence -- And

1 of course there is no dispute that the Palestinian people are  
2 in need. There is a lot of desperate situations over there,  
3 but that doesn't justify violating the law and it doesn't  
4 justify supporting terrorist groups, and that is what you  
5 keeping out and that is what your lawyers keep leaving out.  
6 The jury didn't leave it out, and that is why you were  
7 convicted.

8 Ms. Hollander, you keep pointing out that the allegations  
9 are simply that he provided aid to these zakat committees that  
10 were controlled by Hamas, and that that is all that the  
11 allegations are. And that is what the allegations were, and  
12 that is what the convictions were, but the evidence shows much  
13 more than that. It shows the other half of the story.

14 And you stated that there were no evidence of anti-Jewish  
15 statements from Mr. Baker. I don't know how many videos we  
16 saw where there were vehement and violent anti-Jewish skits  
17 presented, dances, songs, Mr. Baker was there, Hamas speakers  
18 were there are both pre- and post-designation; lots of  
19 evidence that indicated that that is what is going on.

20 The money that -- It was advertised that HLF was raising  
21 money to go to the benefit of Hamas; skits about killing Jews,  
22 praising killing Jews, just a lot of the documents,  
23 conversations that were intercepted between some of the  
24 Defendants where they are praising the suicide bombings where  
25 individuals are killed, civilians that are not soldiers that

1 are not involved in the war over there but they are being  
2 killed by Hamas, and these Defendants were praising that  
3 conduct. So there is plenty of evidence that you haven't  
4 touched on that shows the other side of what is going on here.

5 Part of the problem that we have here, this is one of the  
6 first financing cases that we have, and so there aren't a lot  
7 of other comparators. But you have to consider that the fact  
8 that someone who commits one or two acts of terrorism and  
9 violence, are they in the same category as someone who is  
10 raising millions of dollars over years to fund a terrorist  
11 group who repeatedly commits acts of violence, and this is  
12 what we have here these Defendants have done. This is what  
13 the evidence shows over the years since HLF was created until  
14 it was shut down in 2001, for over ten years they raised  
15 millions of dollars that went to support a terrorist  
16 organization and to support terrorists. And so that is a  
17 different situation than someone who simply commits an act of  
18 terrorism, as bad as that is. They are funding and helping to  
19 cause the commission, then, of ongoing repeated acts of  
20 violence over the years, multiple acts.

21 And in short, Mr. Baker, you weren't here and weren't  
22 convicted because you were helping people. There is nothing  
23 wrong with helping people. A lot of people help people and  
24 they don't get brought into court. You were here and you were  
25 convicted because you were supporting terrorists. And the



1 evidence shows that probably most of your adult life you have  
2 been a supporter of Hamas. That is one of the reasons that  
3 that pre-designation evidence came in. It shows your entirety  
4 of the conduct, how long you were engaged in this conduct of  
5 supporting Hamas. It wasn't illegal at the time, but it  
6 became illegal and you continued doing it because you are a  
7 supporter of Hamas. This was your function. This was the  
8 function of the HLF, and so you continued to do it after it  
9 was illegal.

10 And it is not that you were helping people. You were  
11 helping people. But you were supporting Hamas, and you were  
12 supporting Hamas through the guise of helping people. So  
13 there is no question you were helping people, but that is not  
14 why you were charged and that is not why you were convicted by  
15 the jury. You were convicted because you were found to be a  
16 strong and ongoing, active, and long continuing supporter of  
17 Hamas and you violated the law in doing that.

18 I also need to state that the sentence of the Court has  
19 been imposed considering the factors, the 3553(e) factors,  
20 which you pointed out, Ms. Hollander, as well as the evidence  
21 that I heard over the weeks of trial, the evidence contained  
22 in the presentence reports.

23 And it is also based, regardless of manual that is used,  
24 whether we use the 2001 or 2002, I think the calculations  
25 would be roughly the same. The sentence that the Court would

1     impose would be the same under either manual. It would be the  
2     same if we were simply just going under 3553(e), which I think  
3     at some point is your argument in there under the 2001 manual.  
4     I disagree that that is the way those calculations would work.  
5     I think the 2S1.1 calculations would be the one in effect. I  
6     think the 3A1.4 Guideline still would apply, so we would  
7     roughly have the same Guideline calculation.

8             In any event, the Court's sentence would be the same  
9     regardless of which manual we are using or just proceeding  
10    under 3553.

11            I need to advise you, Mr. Baker, that you have the right  
12    of course to appeal in this case. If you don't have the funds  
13    to hire an attorney, we will appoint an attorney to represent  
14    you at no cost to you. You will be entitled to a copy of the  
15    transcript of the trial, all the proceedings before trial, as  
16    well as the proceedings here today. Those will be provided at  
17    no cost to you. You can speak with your attorneys about  
18    exercising your right of appeal, if you wish to do so.

19            Ms. Hollander, Ms. Duncan, anything else we need to  
20    address here?

21            MS. HOLLANDER: Yes, Your Honor. We have two  
22    requests.

23            One is pursuant to Rule 38, Your Honor can recommend that  
24    Mr. Abu Baker remain close by until the appeal, and in this  
25    case we particularly ask for that because, as you know,

1     some -- We are going to have to come to Dallas to work in our  
2     secure room for -- part of the appeal will involve classified  
3     evidence. And it would actually, since he is indigent, will  
4     save the government considerable money, too, if he can be in  
5     the same place so that we don't have to travel to two  
6     different places when we are working on the appeal. Since we  
7     are going to have to come to Dallas to do part of it, Rule 38  
8     does provide that Your Honor can recommend to the Attorney  
9     General that he stay where he is, or if there is another  
10    facility close to Dallas during the pendency of the appeal.

11       Our second request is that Your Honor recommend to--this  
12    is a separate request--to the Bureau of Prisons that his  
13    designation be as close to Dallas as possible. And we make  
14    that request specifically because his daughter Sanabel cannot  
15    travel very far. And if he is in a remote prison where  
16    normally a family, even a large family can get there, she is  
17    not going to be able to see him.

18       So we would ask Your Honor -- I realize the Bureau of  
19    Prisons makes the final decision, but the Bureau of Prisons  
20    does consider a judge's recommendation, and in this case we  
21    have a specific request based on the illness of the child that  
22    you recommend that he remain --

23           THE COURT: I will grant those requests. I think  
24    the appeal certainly is more practical if he is here so you  
25    can work on it, and because of his daughter's situation.

1           I am sure you understand, Mr. Baker, your lawyers have  
2 explained to you that that is not binding on the Bureau of  
3 Prisons, they will make the final designation, but I will be  
4 glad to make the recommendation.

5           Anything else that we need to address, then, counsel?

6           MS. DUNCAN: No, Your Honor.

7           THE COURT: From the Government?

8           MS. SHAPIRO: Your Honor, just two small points.  
9 This is just to make sure the record is clean. I believe in  
10 the Guidelines for the obstruction enhancement, you may have  
11 done this, but there needs to be a specific finding made by  
12 Your Honor that there was a material falsehood.

13           THE COURT: I think I stated that he made some  
14 material false statements, and that it was made with the  
15 intent to impede and obstruct the criminal investigation.

16           MS. SHAPIRO: Thank you.

17           The other thing is I am told that as part of the sentence  
18 there should be a pronouncement of forfeiture.

19           THE COURT: Correct. We have entered a preliminary  
20 order of forfeiture, and the Court will incorporate that into  
21 the judgment based on the's verdict.

22           MR. JUNKER: Your Honor, Walter Junker appearing for  
23 the Government. The case law actually requires that the Court  
24 orally pronounce the forfeiture as part of the sentence of the  
25 Defendant, not just merely just incorporate it.

1 THE COURT: That incorporating it is not sufficient?

2 MR. JUNKER: That the Defendant has to be informed  
3 on record, for example, that for this particular Defendant it  
4 would be a money judgment has been found against him by  
5 special verdict of the jury in the amount of \$12.4 million  
6 that he is jointly and severally liable with the other  
7 Defendants for.

8 THE COURT: All right. Did you understand that, Mr.  
9 Baker, that the jury answered yes on the forfeiture, that  
10 \$12.4 million. So the judgment will include this judgment  
11 against you for the \$12.4 million, and you are jointly and  
12 severally liable with your co-Defendants.

13 Anything else from the Government?

14 MS. SHAPIRO: No, Your Honor.

15 THE COURT: Mr. Baker, you are remanded to the  
16 custody of the Marshal to serve your sentence. Good luck to  
17 you.

18 (End of hearing.)

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1 I HEREBY CERTIFY THAT THE FOREGOING IS A  
2 CORRECT TRANSCRIPT FROM THE RECORD OF  
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.  
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES  
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE  
6 COURT AND THE JUDICIAL CONFERENCE OF THE  
7 UNITED STATES.

8  
9 S/Shawn McRoberts

06/17/2009

10 \_\_\_\_\_DATE\_\_\_\_\_  
11 SHAWN McROBERTS, RMR, CRR  
12 FEDERAL OFFICIAL COURT REPORTER  
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